of Arizona, ran for reëlection, opposed by the plaintiff. The secretary of state canvassed the returns and duly issued to the plaintiff a certificate of election. The defendant, disputing the result of the election, refused to surrender office at the expiration of his term, and instituted statutory contest proceedings. The plaintiff seeks a writ of *mandamus* to obtain possession of the office and property pertaining thereto, pending the result of the contest. *Held*, that the plaintiff is entitled to the writ. *Campbell* v. *Hunt*, 162 Pac. 882 (Ariz.).

A certificate of election duly executed by the proper authority affords a *prima facie* title to a public office. See *Kerr* v. *Trego*, 47 Pa. St. 292, 296. This may be disputed and the election contested in *quo warranto* or statutory proceedings. See *Frey* v. *Michie*, 68 Mich. 323, 327, 36 N. W. 184, 186. These being the proper actions, it is generally held that the title to office cannot be litigated in *mandamus*. *People ex rel. Wren* v. *Goetting*, 133 N. Y. 569, 30 N. E. 968. See 24 HARV. L. REV. 313. *Cf. Pipper* v. *Carpenter*, 122 Mich. 688, 81 N. W. 962. The claimant *prima facie* entitled may properly invoke this remedy, however, to compel a prior incumbent to surrender possession of the office and its appurtenances. *Couch* v. *State ex rel. Brown*, 169 Ind. 269, 82 N. E. 457; *State ex rel. Voss* v. *Quinn*, 86 Neb. 758, 126 N. W. 388. There will indeed be no relief while an appeal is pending from a judgment against the plaintiff in *quo warranto* or contest proceedings. *Swartz* v. *Large*, 47 Kan. 304, 27 Pac. 993; *Allen* v. *Robinson*, 17 Minn. 113. But if no such judgment has been rendered, the writ of *mandamus* is granted although other proceedings are pending. *People ex rel. Cummings* v. *Head*, 25 Ill. 325; *Crowell* v. *Lambert*, 10 Minn. 369. See HIGH, EXTRAORDINARY LEGAL REMEDIES, 3 ed., § 74. The writ does not affect the merits of the ultimate contest, but merely the right to immediate possession. *State ex rel. Jones* v. *Oates*, 86 Wis. 634, 57 N. W. 296. This result is sound, in view of the importance of possession of an office. For the plaintiff has no adequate remedy, if he must await the result of the more dilatory contest before securing possession. It is, moreover, strongly to the public interest that the candidate legally declared elected should take office at once. Otherwise, a prior incumbent could retain possession in violation of the wishes of the electorate merely by instituting a contest, the settlement of which might be indefinitely delayed. See MCCRARY, ELECTIONS, 4 ed., § 302.

MASTER AND SERVANT — EMPLOYER'S LIABILITY — ASSAULT BY FELLOW SERVANT. — The defendant retained in his employ a workman known to be vicious, lawless and quarrelsome. This workman murdered the plaintiff's intestate, while both were engaged in the common employment. U. S. COMP. STAT. 1916, §§ 8657–8665, make negligence the basis of an employer's liability. *Held*, that the plaintiff may not recover. *Roebuck* v. *Atchison, etc. Ry. Co.*, 162 Pac. 1153 (Kan.).

A master must exercise due care for the safety of his servants in providing a place in which, and appliances with which, to work. *McCombs* v. *Pittsburgh, etc. Ry. Co.*, 130 Pa. 182, 18 Atl. 613. The master must also, in employing servants, have regard to the safety of the fellow servants. Thus, he is under a duty not to employ, or retain in his employ, workmen whom he knows or should know to be so careless or incompetent in the performance of their duties as to subject their fellows to risk of injury. *Baltimore & Ohio R. Co.* v. *Henthorne*, 73 Fed. 634; *Laning* v. *New York, etc. R. Co.*, 49 N. Y. 521. But the courts generally hold that the employer has no duty to guard against injury caused by an act which is not done in pursuance of the servant's duty. See *Palos, etc. Co.* v. *Benson*, 145 Ala. 664, 39 So. 727. Thus the employer has been held not liable for an assault by one servant upon another, committed out of the scope of the offender's duty. *Palos, etc. Co.* v. *Benson*, 145 Ala. 664, 39 So. 727; *Campbell* v. *Northern Pacific R. Co.*, 51 Minn. 488, 53 N. W. 768; *Crelly* v.

Telephone Co., 84 Kan. 19, 113 Pac. 386. Likewise recovery has been denied where the servant was injured in the course of rough play or "initiation" of fellow-employees. *Reeve* v. *Northern Pacific R. Co.*, 82 Wash. 268, 144 Pac. 93; *Medlin Milling Co.* v. *Boutwell*, 104 Tex. 87, 133 S. W. 1042. But in these cases the master had no reason to expect the harmful act to happen and no reason to expect the servant to be dangerous. In the former case, to hold the master would be to make him absolutely liable; to hold him in the latter case would be to restrict too narrowly the field of available servants. However, it is not putting too great a burden on an employer to subject him to a duty not to employ a servant known to be personally dangerous. *Missouri, etc. Ry. Co.* v. *Day*, 104 Tex. 237, 136 S. W. 435. See *McNicol's Case*, 215 Mass. 497, 500, 102 N. E. 697, 698.

MORTGAGES — PRIORITIES — PRIORITY OF NOTES SECURED BY THE SAME MORTGAGE. — The holder of four notes, maturing in successive years and secured by one mortgage, assigned the two notes first maturing to the plaintiff and later assigned the other two to the defendant. The plaintiff claims priority in the proceeds of the security. *Held*, that all the notes share *pro rata* in the proceeds. *Georgia Realty Co.* v. *Bank of Covington*, 91 S. E. 267 (Ga.).

The assignment of a note secured by a mortgage gives to the assignee the protection of the mortgage, although the mortgage itself is not assignable. *Romberg* v. *McCormick*, 194 Ill. 205, 210, 62 N. E. 537, 539. But where several notes, secured by the same mortgage, are assigned to different persons, the right of these holders *inter se* to the mortgage security has been much disputed. Some authorities give priority in order of time of the assignments. *Knight* v. *Ray*, 75 Ala. 383; *Gordon* v. *Fitzhugh*, 27 Gratt. (Va.) 835. A more common rule gives priority to the holders of the notes first maturing. *Flower* v. *Elwood*, 66 Ill. 438; *Horn* v. *Bennett*, 135 Ind. 158, 34 N. E. 321. But the weight of authority is in accord with the principal case, making the holders share *pro rata* in the security regardless of the maturity of their notes or the time of assignment. *Perry's Appeal*, 22 Pa. St. 43; *Studebaker* v. *McCurgur*, 20 Neb. 500, 30 N. W. 686; *Orleans Co. Nat. Bank* v. *Moore*, 112 N. Y. 543, 20 N. E. 357. Even under this latter rule, some cases hold that an assignor who retains some of the notes is deferred to his assignee. *Appeal of the Fourth Nat. Bank*, 123 Pa. St. 473, 16 Atl. 779. *Contra*, *Wilcox* v. *Allen*, 36 Mich. 160. But this holding, if justifiable, is due to the fact that the assignor holds the mortgage in trust for his assignee to the extent of the latter's interest. *Snyder* v. *Parmalee*, 80 Vt. 496, 68 Atl. 649. And the same principle might apply with the same result under the earlier assignment or earlier maturity rule. *Parkhurst* v. *Watertown Steam-Engine Co.*, 107 Ind. 594, 8 N. E. 635. The *pro rata* rule seems the most equitable, as the mortgage is intended to cover all the notes equally. This rule is also the most satisfactory in that it takes care of the cases which the earlier assignment and earlier maturity rules do not cover, *viz.*, where the assignments of the notes in one case and the maturity in the other come at the same time.

MUNICIPAL CORPORATIONS — ESTOPPEL — PUBLIC RIGHTS IN PUBLIC LAND BARRED BY EQUITABLE ESTOPPEL OF THE CITY. — A plat filed in 1882, operating as a statutory dedication of a street terminating on a lake, was accepted by the city; but the street was never opened for public use. In 1900 another plat of the same property was accepted from another party by the city officials. This plat indicated the street as ending short of the water's edge. The defendant, acting in good faith, erected coal docks on a part of the street indicated on the first plat but not on the second, and paid city taxes levied on his property. The city now asserts title to the land. *Held*, that the city is estopped. *City of Superior* v. *Northwestern Fuel Co.*, 161 N. W. 9 (Wis.).

While the usual statute of limitations operates against the private interests